

## United States Senate

WASHINGTON, DC 20510-4105

May 18, 2011

The Honorable Julius Genachowski, Chairman  
The Honorable Michael J. Copps, Commissioner  
The Honorable Robert M. McDowell, Commissioner  
The Honorable Mignon Clyburn, Commissioner  
The Honorable Meredith Attwell Baker, Commissioner  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: Standing Rock Telecommunications, Inc.

Dear Chairman Genachowski and Commissioners Copps, McDowell, Clyburn and Baker:

I am writing you to urge the Federal Communications Commission (the "Commission") to act on two pending matters of significant importance to Standing Rock Telecommunications, Inc. which serves many of my constituents who live within the large, but sparsely populated Standing Rock Sioux Reservation. Standing Rock Telecommunications, Inc. ("Standing Rock") is the only wireless carrier operating a facilities-based wireless network serving the entire Standing Rock reservation of over 4000 square miles in South Dakota and North Dakota. On Aug. 24, 2010, the Commission's Wireline Competition Bureau ("Bureau") designated Standing Rock as a competitive eligible telecommunications carrier ("ETC") in several wire centers within the Standing Rock Sioux Reservation boundaries, entitled Standing Rock to receive both high-cost and low-income federal universal service support. As the Bureau observed, owning and operating this critical communications infrastructure "will empower the Standing Rock Sioux Tribe to protect the health and safety of Tribal consumers, to spur local economic development, to preserve Tribal language and culture, and to further the education of consumers through federal distance education programs." *In the Matter of Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier; Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service Areas.*, Memorandum Opinion and Order, WC Docket 09-197 (Aug. 24, 2010) ("Order") at 1.

Unfortunately, despite the extensive record developed by the Commission as to how its universal service offering on the Reservation will benefit rural and Tribal consumers and is in the public interest (Order, ¶¶19-21), more than eight months later, Standing Rock still has not received any federal universal high cost support for its high costs of operating a wireless network across the vast expanse of its Reservation. The reason for this is that the Bureau's decision, while well

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meaning, erroneously conditioned the redefinition of Standing Rock's service area --limited to wire centers entirely with Reservation boundaries-- upon the "*consent of the North Dakota Commission to redefine the service area of West River, a rural telephone company.*" See, Order at ¶¶ 25, 27 & nn. 68 & 69 (emphasis added). Because the vast majority (more than 95%) of Standing Rock's customers are located within the West River wire centers, the redefinition of which the FCC made subject to North Dakota Commission consent, Standing Rock has received no federal universal service high cost support to date. This is notwithstanding the fact that Congress, when it amended The Telecommunications Act of 1996 by enacting The Eligible Telecommunications Carriers Act of 1997 ("ETC Act of 1997"), added new provisions (a new Section 214(e)(6) and an amended Section 214(e)(5)) which specifically exempt tribally-owned carriers like Standing Rock from state jurisdiction. I was involved in the debate on the ETC Act of 1997 when I was representing the State of South Dakota in the U.S. House of Representatives, and voiced my strong support for this legislation.

In September, 2010, Standing Rock filed a petition for reconsideration of that portion of the Order which conditions the redefinition of Standing Rock's service area on the consent of the North Dakota Public Service Commission as being directly contrary to the amendments of Sections 214(e)(5) and 214(e)(6) of the Act, prior Commission precedent, and principles of tribal sovereignty. Comments and Reply Comments were filed on that specific issue on November 15 and November 30, 2010 in WC Docket No. 09-197. Because the ETC Designation Order conditions the receipt of Universal Service High Cost Support upon North Dakota Public Service Commission consent to the Commission's service area redefinition, Standing Rock has not received any USF High Cost Fund support since the Commission's ETC Designation Order. My understanding is that Standing Rock also met with the Bureau in October, 2010 and filed much of the legislative history underlying enactment of the ETC Act of 1997. Unfortunately, it appears that Commission Rule 54.207(d)(1), which requires state consent to any service area redefinition, without any exception for carriers not subject to state jurisdiction (i.e. tribally-owned carriers) was never amended to conform to the ETC Act of 1997. I urge the Bureau and the Commission to move swiftly to reconsider the August 24, 2010 Order, and to exempt Standing Rock from the condition that the Commission's redefinition of any rural telephone company service area be subject to North Dakota Commission consent. As you know, Standing Rock as a tribal-owned entity and as a wireless carrier is not subject to state commission jurisdiction.

Second, the Bureau deferred action for the full Commission to decide on Standing Rock's petitions for ETC designation and redefinition to serve the entire area within its Reservation boundaries, to include partial wire centers that are within Reservation boundaries. This is a matter raising very important issues of Tribal sovereignty for the full Commission. Any tribe or tribally-owned entity must be able to provide essential services within the entire area of its Reservation; if it is discouraged from doing so, that impedes the ability of the Tribe to govern itself and undermines its sovereignty. Accordingly, Standing Rock must not be limited by unrelated wire center boundaries from being able to receive universal service support within the entire area of its reservation. Such a decision, if limited to tribal areas of an ETC that is not subject to state jurisdiction, will not promote creamskimming, and will only be applicable to tribally-owned carriers or carriers serving a tribal area only. The Commission sought comment on that issue and comments and reply comments were filed on that issue on September 23, 2010

and October 25, 2010 in WC Docket 09-197. Now that the record is complete, I urge the Commission to decide this issue expeditiously.

I am pleased to hear that recently, on April 28, 2011, the Standing Rock petition for reconsideration of the August, 2010 ETC designation order was designated by the FCC as an item that has been circulated and is pending full Commission action. If it will help hasten the adoption of an order that is favorable to Standing Rock on its petition for reconsideration and on the partial wire center issue, please do not put preparation of a detailed response to this letter ahead of movement forward to a vote and order on the issues presented by Standing Rock.

I am sure you recognize that other tribal carriers and potential tribal carriers that would deploy services as Standing Rock has done are also awaiting resolution of these issues to determine whether they will undertake the same risk that Standing Rock has taken to deploy high cost services. I look forward to hearing from you further about progress to resolve these issues of critical importance to the viability of Standing Rock Telecommunications, Inc.

Sincerely,

A handwritten signature in dark ink, appearing to read 'J. Thune', is written over the printed name and title.

JOHN THUNE  
United States Senator

Cc: Sharon Gillett, Chief, Wireline Competition Bureau



FEDERAL COMMUNICATIONS COMMISSION

July 14, 2011

JULIUS GENACHOWSKI  
CHAIRMAN

The Honorable John Thune  
United States Senate  
493 Russell Senate Office Building  
Washington, D.C. 20510

Dear Senator Thune:

Thank you for your letter regarding petitions filed by Standing Rock Telecommunications, Inc. Your letter outlines very clearly the benefits that wireless service providers can bring to remote and seriously underserved regions of the country. It also highlights some of the difficult issues that the Commission needs to consider when addressing communications services for Native lands.

I am pleased to report that the Commission adopted an *Order* on June 21, 2011, designating Standing Rock as an eligible telecommunications carrier throughout the Standing Rock Sioux Reservation, effective immediately. The Commission determined that this designation rightfully is founded on both the historical federal trust relationship shared with federally recognized Tribes and the Commission's commitment to promote the availability of affordable communications services to underserved consumers. I am enclosing a copy of the *Order* for your information.

Thank you for your interest in this important matter. Please do not hesitate to contact me if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to be "J. Genachowski", is written over the typed name.

Julius Genachowski

Enclosure